IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kesar Singh v. Board of Revenue, Ajmer & Ors.

S.B.CIVIL WRIT PETITION NO.2137/1993
under Articles 226 and 227 of the Constitution of India.

Date of Order : 13th May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. L.R.Mehta Sr.Advocate assisted by Shri M.R.Mehta, for the petitioner.
Mr. Shyam Ladrecha, Addl. Govt. Advocate.

BY THE COURT :

This petition for writ to quash the order passed by Collector, Sirohi dated 26.12.1989 to acquire the land measuring 28.28 acres being surplus with petitioner and the orders passed by Board of Revenue dated 10.3.1993 and 27.8.1991 rejecting appeal and review petition preferred by the petitioner and also to declare that the petitioner is not having any excess land within the meaning of provisions of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as “the Act of 1973”).

Facts necessary to be noticed are that the authorised officer under the Act of 1973 by an order dated 21.4.1972 found 58.42 standard acres of land surplus with the petitioner and ordered to acquire the same. The authorised officer by order dated 21.4.1972 also held that transfers of land made by the petitioner in favour of M/s Umed Singh and Takhat Singh were not valid. The petitioner being aggrieved by order dated 21.4.1972 preferred an appeal before the Revenue Appellate Authority but the same was also dismissed, therefore, a second appeal was preferred by the petitioner before Board of Revenue, Rajasthan, Ajmer. The same too was rejected.

The petitioner in this remedial stream being aggrieved by orders referred above preferred a writ petition before this Court and the same was accepted by judgment dated 10.1.1984. This Court while setting aside the orders passed by the Authorised Officer, Revenue Appellate Authority and the Board of Revenue, Rajasthan, Ajmer remanded the ceiling case of the petitioner to authorised officer i.e. the Sub Divisional Magistrate, Sirohi to examine the transfers made by the petitioner in favour of M/s Umed Singh and Takhat Singh in light of provisions of Section 6 of the Act of 1973 and to determine whether transfers were bonafide or not. The authorised officer in view of directions given by this Court by judgment dated

10.1.1984 re-examined the issue and by order dated 19.11.1987 held that transfers of land made by the petitioner in favour of M/s Umed Singh and Takhat Singh were bonafide, accordingly the proceedings under the Act of 1973 were dropped. The authorised officer by order dated 19.11.1987 held that the land transferred in favour of M/s Umed Singh and Takhat Singh is under their possession and they are paying "lagaan" in accordance with law, the land was sold by the petitioner for the purpose of installation of engine at his well. The authorised officer also held that the government failed to produce sufficient evidence to substantiate the fact that consideration was not sufficient.

The State of Rajasthan being aggrieved by order dated 9.11.1987 preferred an appeal before the Collector, Sirohi. The Collector, Sirohi by an order dated 26.12.1989 accepted the appeal and held that the transfer of land in favour of Shri Takhat Singh was bonafide but the transfer of land in favour of Shri Umed Singh was not a bonafide transaction. The Collector, Sirohi declared the petitioner having 28.28 acres of land surplus and, therefore, ordered to acquire the same.

The petitioner being aggrieved by order passed by Collector, Sirohi dated 26.12.1989 preferred an appeal before Board of Revenue, Rajasthan, Ajmer

under Section 23(2) of the Act of 1973. The petitioner challenged the validity and propriety of the order dated 26.12.1989 on various grounds including the ground that the land was transferred to M/s Umed Singh and Takhat Singh on the same consideration and to fulfil the same needs, as such the Collector erred while declaring the transfer made in favour of Shri Umed Singh as not a bonafide transaction though the transfer made in favour of Shri Takhat Singh was treated a bonafide transaction. The Board of Revenue, Rajasthan, Ajmer by its judgment dated 27.8.1991 rejected the appeal preferred by the petitioner and affirmed the order dated 26.12.1989 passed by Collector, Sirohi. A review petition filed by the petitioner before Board of Revenue to review the judgment dated 27.8.1991 was also dismissed by Board of Revenue by order dated 10.3.1993. Hence this writ petition is preferred by the petitioner giving challenge to the orders referred above.

A reply to the writ petition has been filed on behalf of official respondents, those are the respondents No.2 to 5, stating therein that Collector, Sirohi rightly accepted the appeal preferred by the State on the count that the transfer made in favour of Shri Umed Singh was not an out come of bonafide transaction. It is emphasized by the respondents in their reply that the Collector, Sirohi rightly made distinction in the two transfers made by the

petitioner on the count that Shri Umed Singh did not appear before the court in evidence, as such the transfer said to be in his favour was rightly treated as an out come of a transaction which was not bonafide. The respondents in their reply have also stated that the transfers made by the petitioner were at quite a less consideration than the actual cost of the land.

I have heard counsel for the parties and perused the record available.

The main contention of the counsel for the petitioner is that the Board of Revenue as well as Collector, Sirohi failed to appreciate the fact that the land was sold by him to Shri Takhat Singh and to Shri Umed Singh for the same consideration. The authorised officer under the Act of 1973 i.e. the Sub Divisional Magistrate, Sirohi after considering all the evidence available on record reached at the conclusion that the land so transferred was in possession of the purchasers and they were paying “lagaan” in accordance with law. The land was sold for the purpose of installation of engine on the well and with view to develop the fields owned by the petitioner. The consideration was an issue between the parties and the government also failed to produce sufficient evidence to substantiate the fact that the consideration was not adequate.

The authorised officer relied upon the statements given by Patwari Shri Solaram and two “Hallis” working at the fields of Shri Umed Singh. According to the counsel for the petitioner the case of Shri Takhat Singh could not be distinguished with the transfer of land made in favour of Shri Umed Singh as the transfer made to above named two persons was for to satisfy the same needs at the same consideration. The Collector, Sirohi made distinction in these two transactions only on the count that Shri Umed Singh was not produced in evidence. According to counsel for the petitioner that irrespective of fact that Shri Umed Singh was not produced in evidence, sufficient material was available on record to prove the fact that the land was transferred by petitioner to Shri Umed Singh in view of the statements given by Patwari and two “Hallis” working on the fields of Shri Umed Singh. The Collector, Sirohi has not taken into consideration the statements given by Patwari Shri Solaram and the “Hallis” viz. Jessa and Jabbar Singh and also not perused the reports given by Patwari and the Tehsildar concerned. It is further stated by counsel for the petitioner that Shri Umed Singh at the relevant time was working in the Indian Army and, therefore, it was not possible for him to get himself examined by reporting for evidence.

On the other hand, it is stated by counsel for the respondents that though the land was sold by petitioner to Shri Umed Singh and Shri Takhat Singh for the same consideration but the transfer made in favour of Takhat Singh was held bonafide in view of statements given by Takhat Singh himself and by other witnesses, whereas Shri Umed Singh was not produced in evidence and, therefore, the bonafides with regard to transaction made in his favour were very much doubtful and the Collector rightly held that the transaction made in favour of Umed Singh was not bonafide.

The authorised officer under the Act of 1973 by order dated 19.11.1987 held that the transfers of land made by the petitioner in favour of M/s Umed Singh and Takhat Singh were bonafide on basis of evidence available on record. The authorised officer held that the land transferred was in possession of purchasers and they were regularly paying “lagaan” in accordance with law. The authorised officer also found a valid motive for effective transfers of land by sale to Shri Umed Singh and Shri Takhat Singh. It was also found by the authorised officer that the land was sold to above named two persons by the petitioner for the same consideration and the question with regard determination of consideration was an issue between the parties to the transaction. The authorised officer also held that the government failed to produce sufficient evidence to substantiate the fact that the

consideration was not adequate. The authorised officer after considering the entire evidence available on record held the transfers of land made in favour of Shri Umed Singh and Takhat Singh as an out come of bonafide transaction. The Collector while accepting the appeal preferred by the State quashed the order passed by authorised officer on the count that the transfer of land made in favour of Shri Umed Singh was not for an adequate consideration and the same was also not bonafide as Umed Singh was not produced in evidence. It is pertinent to note that the Collector while holding as above held the transaction made in favour of Takhat Singh as an out come of bonafide transaction.

As stated in preceding paras, the consideration for transfer of land in favour of Shri Umed Singh as well as Shri Takhat Singh was the same. The only difference before the Collector while adjudicating the appeal preferred by State was that Shri Umed Singh was not produced in evidence and on that count only the transfer of land made in favour of Shri Umed Singh was not treated as a bonafide transaction.

I failed to understand as to why the Collector has not taken into consideration the statements given by Jessa and Jabbar Singh and Patwari Shri Solaram. All the three persons mentioned above in

quite unambiguous terms stated that the land was transferred in favour of Shri Umed Singh much back in the year 1972. The “Halli” specifically stated that they were working at the field owned by Shri Umed Singh as Umed Singh was in employment of Indian Army. Another person Jabbar Singh also stated that he was cultivating the land owned by Umed Singh which was transferred to him by Kesar Singh, the petitioner. Once the Collector found the transaction pertaining to transfer of land in favour of Takhat Singh as a bonafide transfer, there was no reason to treat the transfer made in favour of Shri Umed Singh as not a bonafide transaction merely on the count that Shri Umed Singh was not produced in evidence. The transaction of transfer of land in favour of Takhat Singh and transaction of transfer of land in favour of Shir Umed Singh are of same nature for all purposes. No distinction could have been made in these two transactions. The reason for making difference in above transactions by Collector is not at all just and proper. If the transaction was bonafide in favour of Shri Takhat Singh then there was no reason to treat the transaction made in favour of Shri Umed Singh as not a bonafide one. The difference made in these two transactions is apparently non-existent.

In view of it, in my considered opinion the Collector erred while interfering with the order passed by the authorised officer under the Act of 1973

and also by quashing the order passed by authorised officer. The Board of Revenue also failed to appreciate the fact that the transfers of land made by the petitioner in favour of Shri Umed Singh and Shri Takhat Singh were of same nature for all purposes. No distinction could have been made in these two transfers. It is true that the Statements of Shri Umed Singh were not recorded but the fact with regard to his possession over the land was sufficiently established by the statements of Patwari and the "Hallis" working on the land transferred to Shri Umed Singh. Sufficient reason was also given by the petitioner for not producing Shri Umed Singh in evidence that he was working with Indian Army at the relevant time.

In view of whatever discussed above, the orders passed by the Collector as well as the Board of Revenue suffer from the error apparent on face.

Accordingly, this writ petition is allowed. The orders passed by the Board of Revenue dated 27.8.1991 and the Collector dated 26.12.1989 are hereby quashed. The order passed by authorised officer under the Act of 1973 dated 19.11.1987 is restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.